

21 December 2007

Professor Jim Fraser
c/o Forensic Services Policy Unit
The Scottish Government
Area 1W.R
St Andrews House
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Dear Professor Fraser

Scottish Government Review

Thank you for giving us the opportunity to contribute to your review of the acquisition, use and retention of DNA and fingerprint information from people who have not been convicted of an offence. As you will know, in September 2007 the Nuffield Council on Bioethics published a report entitled *The forensic use of bioinformation: ethical issues* which includes consideration of this particular question. A Working Group of experts was established in September 2006 to consider these issues and, during the course of its inquiry, it consulted with members of the public, the police, forensic scientists and other interested organisations. Several of the recommendations in the report would appear to be particularly relevant to your review and I have therefore included them in **Annex A**. I have also enclosed a copy of the report as this sets out the background to, and rationale for, the Working Party's conclusions and recommendations. In general terms, I think it fair to say that the Council considers the current Scottish policy on retention to represent an appropriate balance between ensuring that bioinformation can be used successfully to bring offenders to justice and protecting the liberty and privacy of innocent people. Indeed a number of our recommendations suggest that the position in England, Wales and Northern Ireland should be amended to bring them into line with Scotland.

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Further information about the report and the Working Group can be found on our website at:
<http://www.nuffieldbioethics.org/go/ourwork/bioinformationuse/introduction>.

I hope you find this helpful. Please do not hesitate to contact us if we can be of any further assistance.

Yours sincerely

Hugh Whittall
Director

Annex A

Nuffield Council on Bioethics

Recommendations on the retention of DNA, DNA profiles and fingerprints

(Paragraph numbers refer to the full report)

Collecting and storing bioinformation for use in the investigation of minor 'non-recordable' offences

It is our view that the authority of the police to take and store both fingerprints and biological samples from all arrestees without their consent, regardless of the reason for the arrest, is disproportionate to the aims of identifying a person and of confirming whether or not a person was at a crime scene. Suspicion of involvement in a minor (at present 'non-recordable') offence does not justify the taking of bioinformation from individuals without their consent. Where fingerprints are taken electronically in order to verify an identity, they should be compared only with stored subject records and destroyed once such a check has been completed. (Paragraph 4.23)

Retention of bioinformation

There is, at present, a lack of convincing evidence that retention of profiles of those not charged with or convicted of an offence has had a significant impact on detection rates and hence it is difficult to argue that such retention can be justified. Accordingly we recommend that independent research should be commissioned by the Home Office to assess the impact of retention. In the light of the findings of that research, an informed judgment could then be made. (Paragraph 4.53)

We recommend that the law in England, Wales and Northern Ireland should be brought into line with that in Scotland. Fingerprints, DNA profiles and subject biological samples should be retained indefinitely only for those convicted of a recordable offence. At present, the retention of profiles and samples can be justified as proportionate only for those who have been convicted. In all other cases, samples should be destroyed and the resulting profiles deleted from the National DNA Database. This should be reviewed in the light of the findings of the further research that we have recommended. (Paragraph 4.54)

The Scottish practice of allowing retention of samples and profiles, for three years, from those charged with serious violent or sexual offences, even if there is no conviction, should also be followed. Thereafter the samples and profiles should be destroyed unless a Chief Constable applies to a court for a two-year extension, showing reasonable grounds for the extension. (Paragraph 4.55)

The retention of bioinformation from children and young persons

When considering requests for the removal of profiles from the National DNA Database and the destruction of biological samples taken from minors (including from adults who were minors when the DNA was taken), we recommend that there should be a presumption in favour of the removal of all records, fingerprints and DNA profiles, and the destruction of samples. In deciding whether or not the presumption has been rebutted, account should be taken of factors such as:

- the seriousness of offence;
- previous arrests;
- the outcome of the arrest;
- the likelihood of this individual re-offending;
- the danger to the public; and
- any other special circumstances. (Paragraph 4.72)